IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.88 OF 2006

Prabhavati Laxman Pednekar & Ors. ...Appellants
Vs.
Sakharam Kaloji Naik
(since deceased through L.Rs.) ...Respondents

Mr. Sandesh D. Patil for the Appellants
Mr. G.S.Godbole for the Respondent Nos.1-a to 1-d, 2 to 6.

CORAM: A.S.OKA, J.
DATED: APRIL 5,2006.

P.C.:

1. Heard Shri Patil for the Appellants. Second Appeal is preferred by the original defendant Nos.1 to 8. There is was a decree for possession passed against the Appellants in a suit filed by the Respondent Nos.1 to 3 herein.

2. The father of the Respondent Nos.1 to 3 herein who was the original Defendant No.9 in the suit, executed an agreement for sale in respect of the suit property in favour of the husband of the present Appellant No.1. A suit for specific performance filed by the Appellants on basis of the said agreement has been dismissed and the decree has attained finality. The respondent Nos.1 to 3 filed a suit for possession by alleging that the present Appellant No.1 has taken a forcible possession of the suit property. Both the courts below have held that the respondent Nos.1 to 3-Plaintiffs have proved their title and that the Appellant No.1 has unauthorizedly taken possession of the suit

property.

3. The learned Counsel for the Appellants submitted that as the husband of the Appellant No.1 was put in possession of the suit property in part performance of the agreement for sale, the Appellants are entitled to protect their possession under Section 53-A of the Transfer of Property Act, 1882. He submitted that the Respondent Nos.1 to 3 have admitted that the appellants are in possession and it is not their specific case that on a particular date the Appellants dispossessed them. He submitted that in any event, the Respondent Nos.1 to 3 on their own showing have three fourth share in the suit property and the original Defendant No.9 who had one fourth share has not come forward to claim the possession. He therefore submitted that the Respondent Nos.1 to 3 are not the full owners of the suit property and they were not entitled to maintain the suit for possession on title.

4. I have considered the submissions. In the suit for specific performance filed by the Appellants, a finding has been recorded that the Appellants have failed to establish that they were put in possession of the suit property or that they were in possession of the suit property. The suit was dismissed on 5th December 1981. The decree passed in the suit for specific performance against the Appellants has attained finality. It is therefore obvious that the

Appellants cannot claim that they were put in possession of the suit property in part performance of the agreement for sale. It is therefore obvious that Section 53-A of the said Act of 1882 will not protect the Appellants.

5. So far as the second submission of the learned Counsel for the Appellants is concerned, it must be noted that the Appellants cannot claim any right, title or interest in respect of the suit property on the basis of the agreement for sale in view of the provisions under section 54 of the said Act of 1882. The Respondent Nos.1 to 3 had impleaded their father as Defendant No.9 who was the co-owner of the property. The Defendant No.9 did not oppose the suit filed by the respondent Nos.1 to 3. Thus, all the persons having undivided share in the suit property were parties to the suit filed by the Respondent nos.1 to 3. In any case, the appellants have absolute no right, title or interests in respect of the suit property after their suit for specific performance was dismissed.

6. The case of the Appellants is that the husband of the Appellant No.1 was put in possession in part performance of the agreement cannot be accepted in view of the concurrent findings of the courts below. It is not the case of the Appellants that the Respondent Nos.1 to 3 put them in possession of the suit property after 5th December 1981.

That is the reason why the Appellate Court came to the conclusion that the possession of the Appellants was unauthorised.

7. In view of this position, no fault can be found with the decree for possession. No substantial question of law arises. Second appeal is dismissed with no order as to costs.

Judge.